

misrepresentation and concealment by plaintiffs' manager in allowing defendant to suppose that the band were to be paid £250 a week, whereas they were to receive only £100 a week, as the agreement of January, 1904, shews on its face. Plaintiffs reply that there was no concealment; that the truth was fully known to defendant before he entered into the contract; and that they offered to allow him to withdraw if he desired to do so.

I have read the pleadings and the examinations for discovery. From these it seems clear that there are two issues, in both of which the onus is virtually on defendant. The first, as to the validity of the contract, is a matter of law, and the present motion cannot have any reference to that point.

The second is a very important matter, and the decision must depend upon the weight which the jury or Judge gives to the conflicting statements. . . . The evidence sought to be taken on commission does not seem to have anything to do with this question. . . . The solicitors for plaintiffs set out the precise facts which they desire to prove by the evidence of the two foreign witnesses, and asked defendant's solicitors to make such admissions as would render any commission unnecessary. This defendant's solicitors are unwilling to do. They say that these facts are not within the knowledge of defendant, and that, even if the proposed evidence were relevant, these matters can easily be proved by persons now in this Province, and that some of the facts are admitted by defendant in his depositions.

I cannot see any reason for taking the evidence of the bandmaster of the Coldstream Guards. Even if defendant had been in treaty with him with a view to bringing out that band last autumn for a concert tour, that would not furnish any ground for claiming damages in the present action.

And as to Major Rose, after reading over the letter of plaintiffs' solicitor, I am unable to see how the facts there set out are (in some instances) material, and why all of them cannot be proved by other witnesses. . . .

It is not often that a commission to examine foreign witnesses is refused. . . .

[Reference to *Ehrmann v. Ehrmann*, [1896] 2 Ch. 611.]

The main ground of defence is apparently this: that defendant, being a musical expert himself, relied on the representation of the manager that the band were being paid £250 a week; that this justified him in putting the quality